

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.3.2006

Coram

THE HONOURABLE MR. A.P.SHAH, THE CHIEF JUSTICE
and
THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

Writ Appeal No.3642 of 2002

The University of Madras
rep. by its Registrar,
University Building,
Chepauk,
Chennai-600 005.

... Appellant

Vs.

1. Dr.Maa.Selvaraasan
2. Professors' Forum of
Madras University
rep. by its General Secretary
Prof. N.Deivasundaram,
University of Madras,
Chennai-5.

(R2 impleaded as respondent
as per order of Court
dt. 6.3.2003 made in
W.A.M.P.No.847 of 2003)

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 14.11.2002 passed in Writ Petition No.35181 of 2002 on the file of this Court. This petition presented to this Court under Article 226 of Constitution of India to issue a Writ of Certiorarified Madamus call for the records of the respondent in proceedings bearing No.D1(A&B)/TE/2001/1840 dated 15.7.2001 quash the same and to consequently direct the respondent to permit the petitioner to continue in service in the respondent University

for appellant	:	Mr.N.R.Chandran Senior Counsel for Mr.Kandavadivel Doraisamy
for respondent 1:		Mr.R.Gandhi Senior Counsel for Mr.M.Meikandan

JUDGMENT

(Judgment of the Court was delivered by
The Honourable The Chief Justice)

This writ appeal has been filed by the University of Madras challenging the order of the learned single Judge setting aside the order of compulsory retirement passed by the appellant University by way of punishment imposed on the respondent.

2. Briefly stated the facts leading to this appeal are as follows:

The respondent was serving as a Professor in the Department of Tamil Language of the appellant University. When the appellant University created a Department of Contemporary Tamil Literature, on 11.5.1998, he was appointed as its Head. By order dated 19.11.1999 the respondent was placed under suspension for various acts of indiscipline. A charge memo was issued in respect of the misconduct committed by him. The charge against the respondent was that despite written instructions issued in Letter No.D.1(A)/TE/99/10 dated 24.2.1999 and also in the Letter No.D.1(A)/TE/99/392 dated 24.2.1999 based on the resolution of the Syndicate dated 12.2.1999, prohibiting any form of demonstration, fasting, meeting, etc. by the staff of the University inside the campus, the respondent led the MUTA members to observe a fast in front of the Centenary Building in connection with certain demands of MUTA on 25.2.1999 on which date the Syndicate was scheduled to meet. It was further alleged that after the Syndicate meeting was over, the respondent along with the other members of MUTA demanded that the Vice-Chancellor should issue promotion orders to the teachers based on the resolution of the Syndicate on the very same night (i.e. on 25.2.1999) however late it might be. When the Vice-Chancellor expressed his inability to do so, the respondent threatened the Vice Chancellor that he would not allow the Vice Chancellor to leave the campus. Acting on this threat, the respondent and about 25 teachers under his leadership, blocked the exit for the Vice-Chancellor's car. The Vice Chancellor was finally able to leave the premises only after 9.00 p.m. by which time, the respondent took the demonstrators to hold a meeting in the Senate Hall. The respondent and the demonstrators vacated the premises only after 11.30 p.m. that night after they succeeded in getting the promotion orders they wanted from the Registrar in-charge. It was further alleged that consequent on the suspension of the newly instituted Department of Contemporary Tamil Literature, the membership of the respondent in the Academic Council as well as in the Senate had ceased and he was also informed of this fact vide letter No.V.1/AC&SEN/99/426 dated 24.5.1999. Notwithstanding this, on 13.11.1999, the respondent, along with Dr.S.Govindasamy, Professor, Department of Economics, PG Extension Centre, Vellore, who were not members of the Senate, unauthorisedly entered the meeting hall of the Senate when the proceedings of the Senate were in progress. In spite of the repeated directions from the Chair that the non-members of the Senate should withdraw from the hall, he did not do so and caused adjournment of the rest of the proceedings of the Senate.

3. As per the resolution of the Syndicate dated 22.10.1999, the Vice Chancellor appointed one Sri B.Vijayaraghavan, Retired I.A.S. Officer to conduct an enquiry in respect of the charges framed. The Enquiry Officer conducted a detailed enquiry wherein the respondent also participated. The Enquiry Officer found that the charges had been proved and submitted the enquiry report to the Syndicate. The Syndicate considered the same and gave opportunity to the respondent to submit further representation. The respondent submitted a detailed representation. The Syndicate considered the same, and by the impugned resolution, the Syndicate imposed a punishment of Compulsory Retirement on the respondent. This decision of the Syndicate was duly approved by the Chancellor.

4. The order of Compulsory Retirement was challenged by the respondent by filing the present writ petition under Article 226 of the Constitution of India. In the writ petition, the respondent had not raised any factual dispute about the details of the occurrence mentioned in the charge memo or assailed the findings of the Enquiry Officer. In the light of the arguments advanced at the Bar, the learned single Judge framed the following issues:

(i) Whether the mala fide attributed against the former Vice Chancellor for having initiated the impugned disciplinary action vitiates the impugned decision of the compulsory retirement of the petitioner by the Syndicate?

(ii) Whether the impugned disciplinary proceedings vitiates with respect to the charges, namely Charge Nos.I, II and IV, as they were not placed for the consideration of the Syndicate for sanction before initiating the impugned disciplinary action and the enquiry thereunder?

(iii) Whether the impugned disciplinary action as well as the consequential decision of compulsory retirement by the Syndicate is bad as the same is based on the report of an Enquiry Officer, who is not a member of the Syndicate, as the very appointment of the Enquiry Officer is contrary to Section 19(y) of the Act?

(iv) Whether or not the Senate is empowered to review the impugned act of the Syndicate exercising the powers conferred under Section 15 of the Act?, and

(v) To what relief the petitioner is entitled to?"

5. The learned single Judge decided the issue Nos.1 and 2 against the respondent, but on issue Nos.3 and 4 held in favour of the respondent and consequently, set aside the order of compulsory retirement. The learned single Judge held that the decision of compulsory retirement by the Syndicate was bad as the same was based on the report of the Enquiry Officer who is not a member of the Syndicate as the very appointment of the Enquiry Officer is contrary to Section 19(y) of the Madras University Act (hereinafter referred to as the 'Act'). The learned single Judge also held that the Senate being the Supreme Governing Body is empowered to review the action of the Syndicate, if such action of the Syndicate is contrary to the powers conferred under the Act.

6. The principal question which falls for our consideration is whether the appointment of an outsider viz. Sri B.Vijayaraghavan, a Retired I.A.S., who is not a member of the Syndicate to hold an enquiry into the charges levelled against the respondent is contrary to the provisions of Section 19(y) of the Act. The power to take disciplinary action is vested with the Syndicate under Section 19(h) of the Act which reads as follows: -

19. The Syndicate shall have the following powers, namely:-

(h) to suspend and dismiss the University Professors, Readers and Lecturers, and the Teachers and servants of the University.

19(y) of the Act reads as follows:

To delegate any of its powers to the Vice Chancellor, to a Committee from among its own members or to a Committee appointed in accordance with the Statutes.

Pursuant to the power conferred by Section 19(y) of the Act, the Syndicate delegated its powers to the Vice Chancellor as a delegate vide resolution dated 22.10.1999. The Resolution reads as follows:

" RESOLVED that the delegation of powers to the Vice Chancellor to conduct enquiry in relation to the disciplinary proceedings against the Teaching Staff by himself or through a Committee constituted by him in addition to the powers already granted to him by the Syndicate at its meeting held on 17.2.1979 be approved."

The Vice Chancellor appointed Sri B.Vijayaraghavan as an Enquiry Officer to make enquiry and submit a report, and on the basis of the report, the Syndicate imposed the punishment of Compulsory Retirement on the respondent.

7. Mr.N.R.Chandran, learned Senior Counsel appearing for the appellant University strenuously contended that as per the regulation, the entire powers of the Syndicate had been delegated to the Vice Chancellor. Hence the Vice Chancellor assumes all the powers of the Syndicate. The resolution also gives option to take disciplinary proceedings through a committee. According to Mr.Chandran, when the Vice Chancellor appoints an Enquiry Officer, it is not further delegation, but exercising the powers of the Syndicate entrusted to him. The delegation enjoins the Vice Chancellor to initiate action as a disciplinary authority and therefore, he can appoint an Enquiry Officer for the purpose of conducting an enquiry.

8. We find considerable substance in the submission of the learned senior counsel. The statutes of the University do not deal with the procedure to be followed in disciplinary proceedings. In Writ Petition No.17282 of 1994, a learned single Judge of this Court had observed that it is high time that the procedure should be prescribed (See <https://www.indiankanoons.org/1994/17282.html>). The University of Madras rep. by its Registrar,

Madras). In view of the judgment, a resolution was passed by the Syndicate to follow the Tamil Nadu Civil Service Classification (Control and Appeal) Rules applicable to the Government servants while taking disciplinary action against the University employees. This resolution was passed on 22.8.1997. Section 17(b) of the Tamil Nadu Civil Service Classification (Control and Appeal) Rules provides for a reasonable opportunity to a charged employee to defend his case. By following the procedure under Rule 17(b), the University has provided a reasonable opportunity to the respondent. There is nothing in the statutes of the University or in the University Act which prohibits the appointment of any person or body to conduct or hold the enquiry. As there is no express prohibition, the normal rule applicable to such cases will come into play.

9. In *Pradyat Kumar Bose vs. The Hon'ble Chief Justice of Calcutta High Court* (AIR 1956 SC 285), the question arose whether the Chief Justice of the High Court can delegate to another Judge an enquiry of charges against a member of the High Court staff. Answering the question in the affirmative, the Supreme Court said:

"The first objection that has been urged is that even if the Chief Justice had the power to dismiss, he was not, "in exercise of that power, competent to delegate to another Judge the enquiry into the charges but should have made the enquiry himself. This contention proceeds on a misapprehension of the nature of the power.

As pointed out in '*Barnard v. National Dock Labour Board*, (1953) 2 Q.B.18 at 40(B), it is true that "no judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication." But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof.

It is well-recognized that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides is the ultimate responsibility for the exercise of such power. As pointed out by the House of Lords in *Board of Education v. Rice*, 1911 A.C. 179 at 182(C), a functionary who has to decide an administrative matter, of the nature "involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party "has a fair opportunity to

material." The following passage from the speech of Lord Chancellor in local Government Board v. Arlidge, 1915 A.C. 120 at 133, is apposite and instructive.

" My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly.

" To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a court he is not only at liberty but is compelled to rely on the assistance of his staff."

In view of the above clear statement of the law the objection to the validity of the dismissal on the ground that the delegation of the enquiry amounts to the delegation of the power itself is without any substance and must be rejected." (emphasis supplied)

10. The question was again considered in State of Uttar Pradesh v. Batuk Deo Pati Tripathi, 1978 All.L.J 477. The contention before the court was that the constitution of administrative committees for the purpose of dealing with matters which the High Court is bound to deal with under Article 235 of the Constitution of India would itself be bad and it is the entire High Court which should exercise the powers vested in it under Article 235 of the Constitution. Rejecting the said contention the Supreme Court said: -

" The relevant part of Art.235 of the Constitution provides that the control over District Courts and Courts subordinate thereto shall be vested in the High Court. Since Art.216 provides that every High Court shall consist of a Chief Justice and such other Judges as the President may frame from time to time deem it necessary to appoint. Art.235 has to be construed to mean that the control over District

the entire body of Judges who together constitute the High Court and not in the Chief Justice as representing the High Court or an Administrative Judge or a smaller body of Judges acting as an Administrative Committee. But though the control over subordinate courts is vested institutionally in the High Courts by Art.235 it does not follow that the High Courts have no power to prescribe the manner in which that control may in practice be exercised. In fact, the very circumstances that the power of control, which comprehends matters of a wide-ranging variety, vests in the entire body of Judges makes it imperative that rules must be framed to make the exercise of control feasible, convenient and effective. The seeds of the jurisdiction to frame rules regulating the manner in which the control over subordinate courts is to be exercised are thus to be found in the very nature of the power and in the fact that the power vests in the entire body of Judges. The High Court has, therefore, the power under Art.235 itself to frame rules for regulating the manner in which the control vested in it may be exercised. The power to do a thing necessarily carries with it the power to regulate the manner in which the things may be done. It is an incident of the power itself and indeed, without it, the exercise of the power may in practice be fraught with difficulties which will frustrate, rather than further the object of the power. It is undoubtedly true that the rules framed for prescribing the manner in which a power may be exercised have to be truly regulatory in character. The reason is that under the guise of framing rules, the essence of the power cannot be permitted to be diluted. But that is a separate matter which we will consider later. The limited object of the present discussion is to show that High Courts possess the power under Art.235 to prescribe the manner in which the control over subordinate courts vested in them by that article may be exercised. That explains why the Allahabad High Court framed Rules of 1952 not only in the exercise of power possessed by it under Art.235, but in the exercise of all other powers enabling it in that behalf. One of such powers is to be found in Art.235 itself and therefore the abstract power of the High Court to frame the impugned rules cannot be doubted and must be conceded.

... ..

Having given our close and anxious consideration to that question, we regret that we are unable to share the view of the majority of the High Court Full Bench that by leaving the decision of the question of the respondent's compulsory retirement to the administrative committee, the court had abdicated

... ..

Here, the decision to compulsorily retire the respondent was taken by the Judges of the High Court itself, though not by all. If some but not all Judges of the High Court participate in a decision relating to a matter which falls within the High Courts' controlling jurisdiction over subordinate Courts, the High Court does not efface itself by surrendering its power to an extraneous authority. The procedure adopted by the High Court under its Rules is not subversive of the independence of the subordinate judiciary which is what Art.235 recognises and seeks to achieve. The true question then for decision is not the one by which the majority of the Full Bench felt oppressed but simply whether the procedure prescribed by the High Court Rules is in any other manner inconsistent with the terms of Art.235 of the Constitution.

... ..

16. For answering this question it is necessary in the first place to bear in mind that the power of control over the subordinate courts which is vested in the High Courts comprises such numerous matters. Often involving consideration of details of the minutest nature, that if the whole High Court is required to consider every one of those matters the exercise of control instead of becoming effective will tend to cause delay and confusion in the administration of justice in the State. A construction which will frustrate the very object of the salient provisions contained in Art.235 ought, insofar as possible, to be avoided. The control vested in the High Courts by that article comprehends, according to our decisions, a large variety of matters like transfers subsequent postings, leave, promotions other than initial promotions, imposition of minor penalties which do not fall within Art.311, decisions regarding compulsory retirements, recommendations for imposition of major penalties which fall within Art.311, entries in character rolls and so forth. If every Judge is to be associated personally and directly with the decision on every one of these matters, several important matters pertaining to the High Court's administrative affairs will pile into arrears like court arrears. In fact, it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of Art.235. Bearing in mind therefore the nature of the power which that article confers on the High Court, we are of the opinion that it is wrong to characterise as delegation the process

some of the Judges of the Court to act on authorization effectuates the purpose of Art.235 and indeed without it the control vested in the High Courts over the subordinate courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an important part, of the High Court's constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged by some on behalf of all the judges. Judicial functions brook no such sharing of responsibilities by any instrumentality."

11. In *Saradha Balakrishnan vs. The Director of Collegiate Education* (1995 (1) MLJ Reports 610), a Division Bench of this Court rejected the argument that it is only the college committee which is bound to hold disciplinary enquiry from the beginning, and it had no power to appoint enquiry officer to conduct enquiry. Srinivasan, J speaking for the Bench observed: -

"It is a general principle of law that in any disciplinary matter, the disciplinary authority is entitled to nominate an enquiry officer, who will only record the evidence and submit his finding. Such finding is certainly not binding on the disciplinary authority. It is for the disciplinary authority to go into the evidence and other materials collected by the enquiry officer and come to a conclusion on its own. This position has been recognized by the Supreme Court in *Union of India v. H.C.Geol*, AIR 1984 SC 364: (1984) 1 S.C.W.R 28. The contention in that case was that the report of the enquiry officer was in favour of the delinquent officer and that should have been accepted by the disciplinary authority. That contention was rejected and the Court held that the report of the enquiry officer is only to help the disciplinary authority to consider the matter and come to a conclusion and there is no rule that it should be accepted. It is for the disciplinary authority to decide whether the report should be accepted or not."

12. In the light of the established legal position, it is not possible to agree with the view taken by the learned single Judge that the Vice Chancellor had delegated his power to the enquiry officer. We have already pointed out that the Syndicate delegated its power to the Vice Chancellor to take disciplinary action, and the Vice Chancellor appointed an independent enquiry officer to hold an enquiry into the charges leveled against the respondent and submit a report. On the basis of the report of the enquiry officer, the Syndicate imposed punishment of compulsory retirement on the respondent. Under the circumstances, it cannot be said that the Vice Chancellor has delegated his function merely by deputing an enquiry officer to enquire and submit a report. That is an ordinary

mode of exercise of any administrative power. When the enquiry officer is appointed, the disciplinary authority does not lose its power, and therefore the question of delegation of power would not arise in this case.

13. Mr. R.Gandhi, learned Senior Counsel appearing for the respondent, however, urged that the Tamil Nadu Civil Service Classification (Control and Appeal) Rules, in particular Rule 17(b) ought not to have been applied inasmuch as Rule 17(b) deals with procedure to be followed for major punishment only and the same ought not to have been followed since the incident referred to in the charge memo warrants only a minor punishment. Mr.R.Gandhi, submitted that the punishment imposed by the Syndicate is excessive and disproportionate. We are unable to accede to the submission of Mr.R.Gandhi. The charges pertain to an act of indiscipline especially by a teacher, which is a serious charge. In paragraph 47 of the enquiry report, the enquiry officer has observed thus: -

" 47. AO 1 is a senior member of the teaching faculty and having long years of experience. It is not as if his acts of gross misconduct could be attributed to lack of knowledge or lack of experience. On the contrary, his various explanations have only confirmed that all his acts of misconduct were deliberate and in open defiance of Authority and established norms of discipline and this defiance is reflected even in his present explanation. There are absolutely no mitigating circumstances. Clearly, he has no intention of mending his ways. The punishment to be imposed on AO1, has to be decided by the Syndicate."

A perusal of the charges framed against the respondent shows that the action of the respondent was clearly in breach of the relevant rules and regulations. The respondent held demonstrations inside the campus of the University in violation of the clear directions of the Syndicate. He along with his colleagues gheraoed the Vice Chancellor and virtually compelled the Registrar to issue promotion orders under extreme duress. We may also mention that in the past, in the year 1984, the respondent had involved in the act of indiscipline and was suspended and the order of suspension was confirmed by a learned single Judge of this Court, though subsequently the enquiry was dropped. Under the circumstances, it is not possible to hold that the charges against the respondent were of minor in nature, and the punishment imposed is harsh and excessive.

14. Mr.R.Gandhi next argued that the suspension ought to have been approved by 2/3rd of the members of the Syndicate and the same has not been done and consequently, the entire proceedings are vitiated. The submission made by the counsel is not borne by record. This very submission was raised by the respondent while challenging the suspension order and the order of suspension, even though set aside by the learned single Judge, was confirmed by a Division Bench which had upheld the order of suspension. The very point was urged before the Division Bench and the Division Bench has rejected the same and has held that with regard to interim suspension, Rule 5 would not apply. It is not now open to the respondent to challenge the suspension as the enquiry is completed and

pursuant to the enquiry, the respondent has been compulsorily retired by the competent authority. It is also required to be noted that the final order of compulsory retirement was approved by 2/3rd of the members of the Syndicate. Out of 22 members present in the Syndicate, only two members viz. Mr.R.K.Balasubramanian and V.G.Shanmugam recorded their dissent and all others supported the decision to impose the punishment of compulsory retirement.

15. The learned single Judge while deciding the issue No.4 has observed that the Senate is the Supreme Governing Body and it has got jurisdiction to review the action of the Syndicate. The Senate has power to review the action of the Syndicate or Academic Council only if they have acted outside the powers conferred under the Act. When there is no violation of the statutes in imposing the punishment and the report of the Enquiry Officer has been duly considered and the punishment was imposed after giving a full opportunity to the respondent, the question of exercise of power by the Senate does not arise. In any event, the punishment was imposed after giving a full opportunity of hearing and therefore, we do not find any substance in the contention of the respondent that there was violation of the provisions of the Act and the statutes framed by the University.

16. In view of the foregoing discussion, we are of the opinion that the punishment of compulsory retirement imposed on the respondent by the Syndicate is legal and valid. Consequently, the impugned order of the learned single Judge is set aside. The writ petition is dismissed, and the writ appeal is allowed. No order as to costs. W.A.M.P.Nos. 6101 of 2002 and 719 of 2006 are closed.

Vu/pv

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The General Secretary (Prof.N.Deivasundaram)
Professor's Forum of Madras University,
University of Madras, Chennai-5.

2. The Registrar,
University of Madras,
University Buildings,
Chepauk, Chennai-5.

+ 1 CC To Mr.Kandavadivel Doraisami, Advocate, SR NO.15613.
+ 1 CC To Mr.T.Meikandan, Advocate, SR NO.15299.

W.A.No.3642 of 2002

AK(CO)